

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

-vs-

Case No. 19-CR-117-WMC

ADRIAN C. GARDINER,

Madison, Wisconsin

June 15, 2021

Defendant.

1:14 p.m.

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STENOGRAPHIC TRANSCRIPT OF VIDEOCONFERENCE SENTENCING  
HELD BEFORE U.S. DISTRICT JUDGE WILLIAM M. CONLEY

APPEARANCES:

For the Plaintiff:

Office of the United States Attorney  
BY: ELIZABETH ALTMAN  
Assistant United States Attorney  
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Madison, Wisconsin 53703

For the Defendant:

Tracey Wood & Associates  
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Also appearing: ADRIAN C. GARDINER, Defendant  
MARIAH STIEVE, U.S. Probation Officer

Jennifer L. Dobbratz, RMR, CRR, CRC  
U.S. District Court Federal Reporter  
United States District Court  
120 North Henry Street, Rm. 410  
Madison, Wisconsin 53703  
(608) 261-5709

1 (Proceedings called to order at 1:14 p.m.)

2 THE CLERK: Case No. 19-CR-117-WMC, *United States of*  
3 *America v. Adrian C. Gardiner*, called for a sentencing.

4 May we have the appearances, please.

5 MS. ALTMAN: Good afternoon, Your Honor. The United  
6 States appears by Elizabeth Altman.

7 MR. HARGROVE: Good afternoon, Your Honor. Mr.  
8 Gardiner does appear via Zoom represented by counsel, Joshua  
9 Hargrove.

10 THE COURT: Very good. We are here for the sentencing  
11 of Adrian C. Gardiner, and I have to ask you, first, Mr.  
12 Gardiner, to confirm that, despite improvements in COVID-19 in  
13 Dane County, there continue to be risks in outlying counties and  
14 obviously a risk until decided otherwise by health officials.  
15 However, we are again meeting people in person in the courtroom  
16 for other matters, and if you wished, we certainly would do so  
17 again here and would bring you here to reassemble. However,  
18 there remain good grounds not to require that, assuming that you  
19 continue to wish to waive your personal appearance at sentencing  
20 as indicated by the waiver filed by your counsel on your behalf.

21 Does that continue to be your desire, that is, that we  
22 proceed today by videoconferencing?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: All right. And then, secondly, I do want  
25 to confirm that you've had an opportunity to read and discuss

1 with your counsel the PSR and addendum to the PSR.

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: I'll turn to the government just to confirm  
4 that it is moving for an additional one-level reduction for  
5 acceptance of responsibility.

6 MS. ALTMAN: Yes, Your Honor.

7 THE COURT: And that motion is granted. I also note  
8 that we appear to have at least -- well, I'm not certain who in  
9 addition to the victim but perhaps the victim, who could be  
10 shown in this call but initially I've chosen not to show her.  
11 She has every right to participate, but I'm not sure what her  
12 desires are, whether to simply watch or to actually address the  
13 Court, and I'll turn to the government's counsel for some  
14 guidance.

15 MS. ALTMAN: Yes, Your Honor.

16 I know that Ms. Haynes-Porter, who is the victim's  
17 grandmother, wishes to address the Court. Ms. Paula Kedzie is  
18 also on Zoom. She submitted a letter to this court. She is the  
19 victim's social worker, and I don't know whether she wishes to  
20 add something in person or not, but I know that the victim's  
21 grandmother does.

22 THE COURT: I certainly have Ms. Kedzie's thoughtful  
23 memo and am taking it into consideration, but at the appropriate  
24 time in the government's presentation, I will turn to you, Ms.  
25 Altman, to indicate if the others wish to speak, at which point

1 anyone who asks to speak will then be displayed on the monitors.  
2 In fairness, particularly given the harm done to the victim, I  
3 want to make sure they understand that this is publicly  
4 available to view. I'm not sure how many viewers we actually  
5 have, but this is a public proceeding, and because it's not  
6 being held in court, it's available on YouTube to those who may  
7 wish to respond.

8 I also note that Ms. Kedzie has just written that she would  
9 like to speak as well, so at the appropriate time, we will have  
10 both individuals speaking.

11 In the meantime, I do want to address a couple other  
12 matters: first, restitution and where we stand and, secondly,  
13 the guidelines.

14 Ms. Altman, can you advise me as to the status of the  
15 restitution at this point?

16 MS. ALTMAN: Yes, Your Honor. We have mentioned  
17 restitution to the victim's grandparent, who I believe right now  
18 is her guardian. We have not had time yet to have an in-depth  
19 conversation about that and would request that the Court leave  
20 it open.

21 THE COURT: All right. That's what I will do, and we  
22 will have that hearing on August 20th, 2021, at 1:00 p.m.,  
23 unless the parties are able to reach an understanding before  
24 that time.

25 With those preliminaries, I will accept the plea agreement

1 finding that the offense of conviction adequately reflects the  
2 defendant's criminal conduct and the plea agreement does not  
3 undermine the statutory purposes of sentencing. In determining  
4 the defendant's sentence, I will take into consideration the  
5 advisory sentencing guidelines and be governed by the statutory  
6 purposes of sentencing set forth at Section 3553(a) of Title 18.

7 As to the guidelines, while the government had no  
8 objection, the defendant did object to the application of the  
9 specific offense characteristic at Sections 2G2.1(b) (6) (A) and  
10 (B). Although the Sentencing Commission has called on Congress  
11 to change or remove this enhancement and, as defendant noted,  
12 this court also routinely grants downward departures where this  
13 enhancement might apply for reasons reflected in part E of the  
14 presentence report, it remains in the guideline manual and is,  
15 in the Court's view, appropriately applied in this case because,  
16 one, the defendant used his cellular phone under subsection  
17 (6) (A) to arrange for his travel to Wisconsin to engage in  
18 sexual conduct with a minor rather than simply to hold -- I  
19 shouldn't say simply, but to hold pornographic images, child  
20 pornography, as is normally before the Court, and, two, the  
21 enhancement is also applicable under subsection (b) (B) because  
22 the defendant represented to the same minor that he was 18 years  
23 old.

24 Moreover, while the defendant objected to Chapter Four --  
25 the Chapter Four enhancement at paragraph 41 of the presentence

1 report, he did so by citing Section 4B1.5(a)(1) when the  
2 applicable cite is to subsection (b)(1). Under subsection  
3 (b)(1), the defendant's relevant conduct establishes a pattern  
4 of prohibited sexual conduct by repeatedly traveling to  
5 Wisconsin to engage in sexual intercourse with Minor A, and  
6 these events occurred -- the fact that these events occurred as  
7 part of the instant offense involving the same victim, does not  
8 result in additional criminal convictions, is not a relevant  
9 factor as set forth in the applicable note, 4(B)(ii).

10 With those objections addressed, I, therefore, find the  
11 probation office calculated the advisory guidelines correctly  
12 using the current manual and taking into account all relevant  
13 conduct under Section 1B1.3.

14 The guideline for production of child pornography in  
15 violation of Section 2251(a) of Title 18 is found at Section  
16 2G2.1. The base offense level is 32 under subsection 2.1(a), to  
17 which two levels are added under subsection 2.1(b)(1)(B) because  
18 Minor A had attained the age of 12 years but not yet attained  
19 the age of 16 years.

20 Two more levels are added under subsection 2.1(b)(2)(A)  
21 because the offense involved the commission of a sexual act or  
22 sexual contact. Specifically, as noted already, the defendant  
23 engaged in sexual intercourse with Minor A.

24 Another two levels apply under subsection 2.1(b)(3) because  
25 the defendant knowingly created a video of Minor A and

1 distributed it to Minor A.

2 Two final levels are added under subsections 2.1(b)(6)(A)  
3 and (b)(6)(B) because the defendant used a computer on an  
4 interactive computer service to solicit Minor A's participation  
5 in sexually explicit conduct and knowingly misrepresented his  
6 own age to persuade, induce, entice, and coerce her to engage in  
7 sexually explicit conduct. More specifically, the defendant  
8 used his cellular phone and various internet applications to  
9 meet Minor A and arrange for his travel to Wisconsin for the  
10 purpose of engaging in sexual contact with her while also  
11 representing that he was 18 years old.

12 While no other Chapter Two adjustments apply, the offense  
13 of conviction is a covered sex crime. The defendant engaged in  
14 a pattern involving prohibited sexual conduct. The defendant  
15 sexually assaulted Minor A on multiple separate occasions in the  
16 summer of 2019, and neither Section 4B1.1 as a career offender  
17 nor subsection (a) of Section 4B1.5 applies. Therefore, the  
18 defendant is considered a repeat dangerous child sex offender  
19 whose offense level shall be V under Section 4B1.5(b)(1) plus  
20 the offense level determined under Chapters Two and Three,  
21 making the applicable offense level 45.

22 The defendant qualifies for a three-level downward  
23 adjustment under Section 3E1.1 because he has demonstrated  
24 acceptance of responsibility for his offense and the government  
25 has moved for the additional reduction.

1           Accordingly, with a total offense level of 42 and a history  
2           category of I, the defendant ordinarily would have an advisory  
3           guideline imprisonment range of 360 months to life. However,  
4           the statutory authorized maximum sentence of 30 years is the  
5           same as the minimum of the applicable guideline range, meaning  
6           that the guideline term of imprisonment is 360 months under  
7           Section 5G1.1(a).

8           I note that, in the defendant's memorandum, that emphasis  
9           was placed on the fact that this defendant has no meaningful  
10          criminal history, I think a total of one point before these  
11          crimes, and that that should be a mitigating factor. I am  
12          willing to consider it. However, I'm not sure I can get to the  
13          sentence that either the defendant or, more inexplicably, the  
14          government is recommending, and it's principally because of the  
15          severity of the crimes that were committed. The Court has  
16          seldom had a defendant engage in more repeated horrendous  
17          conduct at the age of 41. I'm not even sure that's right. When  
18          it was committed, I guess he would have been 41. To engage in  
19          this kind of repeated conduct with a 12-year-old, no matter what  
20          he told himself to begin with, and then to continue it when he  
21          knew himself how young she was, to do so by thwarting her foster  
22          parents for a clearly vulnerable victim, and to expose her to  
23          others who also raped her, it's just a horrendous set of facts,  
24          and at 41, now 42, I have a great deal of trouble not viewing  
25          the defendant as a continuing danger to society. The only



1 differences are what are pointed out by the defendant, fairly  
2 so, that his criminal history is very small -- but under the  
3 guidelines, that's already addressed by him being a category  
4 I -- and the fact that he doesn't appear to have circulated the  
5 videos that he made, which would further victimize this  
6 individual.

7 I am certainly taking into consideration seriously the  
8 agreement reached by the parties as to a recommended sentence,  
9 but this does not strike me as a mandatory minimum case given  
10 the egregious nature of the facts, and so I am struggling with  
11 an appropriate sentence, and I'm happy to hear from the  
12 government, although I've certainly read the memorandum  
13 provided. I'm not sure that the memorandum itself, except for  
14 asking for the agreed-upon 20 years, doesn't make a pretty good  
15 argument for why the Court should go above the mandatory  
16 minimum.

17 And with that, I'll hear from the government.

18 MS. ALTMAN: Your Honor, I don't have anything to add  
19 to my arguments. I would just ask that the Court listen to the  
20 victims at this time, starting with Ms. Haynes-Porter, if the  
21 Court would.

22 THE COURT: The only thing -- I'm happy to do that, Ms.  
23 Altman, but I am looking for something that would support your  
24 repeated assertion in your memorandum that 20 years would avoid  
25 unwarranted disparities and be sufficient but no greater than

1 necessary to accord with the purposes of sentencing. I know you  
2 agreed to make a recommendation of 20 years, but I can't think  
3 of a case where I hadn't gone above the mandatory minimum for a  
4 hands-on sexual assault of a minor. Maybe the only difference  
5 is this poor child was 12 instead of some of the more extreme  
6 age differentials, but, I mean, I'm really having trouble  
7 thinking of a case where someone was similarly situated where I  
8 adopted the 20-year minimum. And when you were making those  
9 statements, were you thinking of some case or cases in  
10 particular?

11 MS. ALTMAN: Yes, Your Honor. I had cited two cases in  
12 my brief, the one with Mr. Kvatek, who was -- repeatedly  
13 sexually assaulted a girl who was 15, although she was -- did it  
14 more willfully, and then recently --

15 THE COURT: And also, just so we're clear, I thought  
16 that case involved -- was that a conviction for sexual assault  
17 or was it for possession of child pornography? What was he  
18 allowed to plead to?

19 MS. ALTMAN: I can double-check, Your Honor, quick  
20 while you do the rest of the hearing. It was either  
21 distribution or production, one of the two.

22 THE COURT: That's what I was thinking. Well, that's  
23 fine. And then --

24 MS. ALTMAN: The second case, Mr. Torres, he did plead  
25 to production, and he had the two victims with the hands-on

1 contact, if you recall, and that was 20 years, and that was what  
2 I was equivocating it toward because one of the victims in that  
3 case was 7.

4 THE COURT: And I'm trying to remember, there must have  
5 been some other extenuating cases. Was Mr. Ramirez [verbatim]  
6 to be immediately deported? There were other factors that  
7 caused me to come down to that number, and I apologize because,  
8 as you say, you did cite these, and I should have looked at them  
9 before proceeding today, but if you can provide me any other  
10 context with respect to that case as well, I would appreciate  
11 it.

12 And with that said, I am happy to hear from the victim  
13 representative as well as Ms. Kedzie, the lead social worker for  
14 the victim. Why don't we begin with the victim's grandmother,  
15 and if she's comfortable, I would ask that she be put on the  
16 screen. It's totally up to you whether you want to be seen or  
17 not.

18 MS. HAYNES-PORTER: Your Honor --

19 THE COURT: Yes.

20 MS. HAYNES-PORTER: -- I would like to have access to  
21 video.

22 THE COURT: Very good. And I can see you now as well.

23 MS. HAYNES-PORTER: But now I can't see you.

24 THE COURT: I wonder if perhaps you -- well, you  
25 couldn't have hit your video, so I'm not sure why that would be.

1 MS. HAYNES-PORTER: Okay. Now I can.

2 THE COURT: Is that better?

3 MS. HAYNES-PORTER: Yes. I can see you, Your Honor.

4 THE COURT: Very good. Why don't you proceed with any  
5 statement you wish to make.

6 MS. HAYNES-PORTER: Okay. Good afternoon, everyone.

7 THE COURT: Good afternoon.

8 MS. ALTMAN: Good afternoon.

9 THE COURT: Go ahead.

10 MS. HAYNES-PORTER: I would like to talk to you about  
11 the horrific and grotesque crime that Adrian Gardiner committed  
12 against my granddaughter. It has changed her life forever. I  
13 spend countless hours, days, and months trying to help my  
14 granddaughter piece back together her very fragile life. I have  
15 been awakened from my sleep to the screams -- I'm sorry.

16 THE COURT: No, no. There's no need to apologize, and  
17 I can only imagine the pain that you're experiencing with your  
18 granddaughter. Take your time, and I'm happy to hear anything  
19 you wish to say.

20 MS. HAYNES-PORTER: My granddaughter violently fights  
21 in her sleep while sweating profusely. I sometimes hold her in  
22 my arms while trying to convince her that she's safe now,  
23 reassure her that the monster -- that would be you, Mr.  
24 Gardiner -- is not standing outside the window threatening to  
25 kill us the way you did on that terrible night when she was at

1 another residence. I watch her jump when we're driving if a car  
2 gets too close to us. I suffer a great deal when she says  
3 certain males trigger her anxiety and make her have heinous  
4 flashbacks of the way she was so viciously violated. I'm sure  
5 that this is not the first time you've done this. You just got  
6 caught this time. I find myself making several trips throughout  
7 my home at night checking my doors, checking my windows. I'm  
8 afraid to even retrieve my car from my garage because I'm  
9 fearful that there may be someone just like you waiting to  
10 ambush me. You have successfully torn apart an entire family.

11 Your Honor, I hope that you sentence this man with the  
12 maximum time allowed. He does not deserve the privilege to be  
13 released. I beg of you, I implore you, please don't give him  
14 the chance to ruin another child's life. Hopefully you will  
15 afford my family the opportunity to breathe a small sigh of  
16 relief knowing that this man will hopefully die in jail.

17 THE COURT: And I --

18 MS. HAYNES-PORTER: Thank you, Your Honor.

19 THE COURT: I can only tell you that I am certainly  
20 considering the incredible damage that the defendant's acts  
21 caused not just your granddaughter but her entire family,  
22 including you. As you know, the minimum sentence that I could  
23 impose, which is being recommended by the parties, is 20 years,  
24 so he's going to serve a lot of time, period, and he's going to  
25 be under a 30-year period of supervision involving federal

1 probation officers, who take their job quite seriously,  
2 especially when it comes to hands-on child sexual assault  
3 defendants.

4 More importantly, I know that your granddaughter is  
5 undergoing therapy, and I hope you don't give up on the value of  
6 that. It may take a long time, but she needs to get to the  
7 right therapist, and she needs to be open with the right  
8 therapist to process this over time. I don't mean to suggest  
9 for a moment she'll ever be the same person she was before, but  
10 the progress that can be made by a good therapist to help a  
11 child process this and move on with their life is pretty  
12 remarkable. So I hope you will constantly encourage her when  
13 she is down, when she is having these experiences, to pursue  
14 therapy, and if it's not working, then change therapists.  
15 There's someone out there who can help your daughter [verbatim]  
16 and, as importantly, can help you and the rest of your family,  
17 and at some point therapy that includes you, if you're that  
18 close with your granddaughter, as you obviously are, may help  
19 you see ways to assist in the processing and not to trigger the  
20 worse symptoms.

21 I know you love your granddaughter and that you're doing  
22 everything you can. The one thing you can't bring to the table  
23 is the objectivity of a trained therapist, and so I just  
24 encourage you -- this is the defendant's fault, all of this, but  
25 it doesn't mean that he gets to have the last word as to the

1 damage done to your granddaughter or to your family, and I hope,  
2 whatever the sentence is today, that this is the start of a  
3 period of healing, understanding it could be very long and the  
4 pain will always be there.

5 One thing I've learned -- I guess I knew this as a general  
6 matter before taking this job, but after more than 11 years on  
7 the job, I know the only way to really heal is to forgive, and  
8 that's an impossible ask for the victim or for her family in a  
9 case like this, but by God's grace, you may get there some day,  
10 and I hope that you all do and that the defendant recedes into  
11 the background of your lives rather than the prominence of it  
12 right now. I know it takes an awful lot of work to not just --  
13 to even approach forgiveness. It takes a lot of work just to  
14 process what happened, but I hope that you and your family, and  
15 particularly your granddaughter, are able to do just that.

16 Unless there's anything more you wish to add, I'm happy to  
17 hear from Ms. Kedzie, the social worker who worked with your  
18 granddaughter.

19 MS. HAYNES-PORTER: Okay. I'm done. Thank you, Your  
20 Honor.

21 THE COURT: Thank you very much. I greatly appreciate  
22 you speaking today, and I guarantee you that it will be on my  
23 mind in considering an appropriate sentence today. Thank you.

24 MS. HAYNES-PORTER: Thank you.

25 THE COURT: Ms. Kedzie, I have read your memorandum.

1 It was very well written, and it did paint a picture of the ways  
2 in which Mr. Gardiner made everyone's job harder and created the  
3 nightmare that he did, particularly not just for the victim but  
4 for the foster parents who were trying to protect her, but I'd  
5 be happy to hear anything else that you wish to add.

6 MS. KEDZIE: Sure, Your Honor. First is Nevaeh, she  
7 had wanted to attend this court hearing. I met with her and  
8 Guanita and another worker last week, and she wanted to attend.  
9 She was calling family members, encouraging them to attend. She  
10 asked her mental health case manager if she and her mentor would  
11 help her write a letter to Your Honor, and she's not here  
12 because she's on the run. You know, like the very next day she  
13 ran away from her grandma -- well, she and her grandma got into  
14 a fight, you know, over supervision, you know, and then she went  
15 to one of our respite foster homes, you know, someone who has a  
16 lot of experience dealing with, you know, teenagers with  
17 difficult behaviors and mental health problems, and the next day  
18 she ran away from there. So that was about a week ago. We  
19 don't know where she is. She's not in contact with her grandma,  
20 with her mom, with any of us workers, sisters, aunts, uncles.  
21 The word is that she, you know, she found someone, a man, to pay  
22 her way to Chicago, you know. That's what we've heard through  
23 the grapevine.

24 The damage he's done to her is incalculable. I can't  
25 pronounce that word right now.



1 THE COURT: You got it right.

2 MS. KEDZIE: Okay. What we also had in place is  
3 in-home family therapy had just been starting. She was going to  
4 start horse therapy, which she was interested in. A mentor from  
5 a few years ago was back involved. One of the very best  
6 therapists here in Madison working with sexual abuse, Dawn  
7 Brubakken, was going to be starting with her in July, and so we  
8 really did have a good team developing, but she's been on the  
9 run for a week, and that follows her being on the run for five  
10 weeks prior, and this -- she wasn't a kid who ran away until she  
11 was sexually assaulted by Mr. Gardiner. She was -- she had  
12 problems, don't get me wrong. She lashed out at people  
13 physically and made threats and didn't trust people, but this  
14 behavior that started two years ago, you know, that was new, and  
15 it started with the sexual assaults. So I can't think of  
16 anything else to add.

17 THE COURT: I'm not sure there is anything more that  
18 can be added. I'm heartened to hear that you remain involved  
19 and hope that she eventually reaches out to someone who cares  
20 about her.

21 It may be, Ms. Haynes-Porter, that placement in some other  
22 setting is going to be necessary for her initially. I know that  
23 a victim coordinator through the government's office is  
24 available to assist as well. If there's anything that we can do  
25 at the court -- unfortunately, my principal task today is simply

1       sentencing, and it's a horribly blunt instrument. It doesn't  
2       change the harm that's been caused to the victim, and it doesn't  
3       guarantee that the defendant or others like him will not engage  
4       in similar conduct, but it's all I have, and I can assure you  
5       that I am keeping in mind both your memorandum and your comments  
6       today, and the victim will be -- and her family will be in my  
7       prayers, and I hope that she does step forward. I'm not sure  
8       this hearing will have any value. I don't think -- it's not  
9       permitted to be recorded, but if there's anything I can do down  
10      the line to assist, if we're lucky enough to get her back where  
11      people care about her, I would certainly do that. Thank you for  
12      your comments today.

13             At this point then I will hear from Mr. Hargrove.  
14      Obviously, a lot has been said. I certainly don't view you as  
15      needing to respond to those who have spoken on behalf of the  
16      victim other than perhaps if there's something you wish to say  
17      regarding my comments or the government's comments, but you're  
18      welcome to make whatever additional statement you want,  
19      understanding that I have read with some care the memorandum  
20      that you already filed.

21             I'm not sure if you're speaking or not. Your mic is muted.

22             MR. HARGROVE: Yes, Your Honor. I can make a few  
23      comments, and I won't reverberate everything that was written in  
24      the PSR or in our sentencing memorandum, as the Court has made  
25      it clear that it's reviewed everything carefully.

1 I can tell the Court that I do believe that the leading  
2 aim, as has been thoroughly established in the sentencing, would  
3 be punishment, and I do believe that at the far end of this, no  
4 matter how long the Court incarcerates Mr. Gardiner, I also  
5 believe that a secondary, even a diminished aim, would still be  
6 rehabilitation for someone like Mr. Gardiner.

7 THE COURT: And I certainly agree that's the goal, and,  
8 fortunately, there are developing programs. They're certainly  
9 not there yet, but they're at least working hard to develop  
10 meaningful programs for those who engage in hands-on sexual  
11 offenses, and none of my comments were intended to indicate that  
12 I didn't think it was possible for the defendant to be  
13 rehabilitated. It's just an area that we have very little  
14 understanding of, and, fortunately, with careful supervision,  
15 it's generally been managed for those who have served, but  
16 there's obviously no guarantee since we don't really understand  
17 the motivation behind the crime itself.

18 MR. HARGROVE: And I completely agree with the Court.  
19 I just wanted to state I believe and, as someone who has had a  
20 number of conversations with Mr. Gardiner, I can tell the Court  
21 unequivocally that while he may never in his life be able to  
22 appreciate the impact and the devastation that he's caused her  
23 and her family, he definitely has an overwhelming amount of  
24 remorse, and he's taking responsibility for this, and I don't  
25 just say that as rhetoric. I say that because --

1           THE COURT: And, Ms. Haynes-Porter, I would just ask --  
2     you're welcome to stay on and be seen, but I wouldn't let  
3     someone shake their head in the courtroom, and I would ask that  
4     you not do that here. I know what your response is to this.  
5     You don't need to shake your head to tell me the anguish that  
6     these comments are, but I hope you realize that Mr. Hargrove has  
7     an obligation to represent his client and to make appropriate  
8     statements. If you find it difficult to maintain your  
9     composure, which I understand, you can just do what has been  
10    done by the social worker and simply remove the image. If you  
11    wish to do that, I would understand it. But, otherwise, I do  
12    have to ask you to at least not make demonstrations that are  
13    distracting to my job, which is to hear from everyone. Thank  
14    you for that.

15           I'm sorry, Mr. Hargrove, for interrupting. Go ahead.

16           MR. HARGROVE: Oh, no need, Your Honor.

17           I think it's clear from all counts and no one contests that  
18    this is an egregious case that's caused hurt all around, and I  
19    completely can state that Mr. Gardiner is truly accepting  
20    responsibility and accountability for his behavior. I believe  
21    his actions have caused hurt to everyone. As I stated in the  
22    sentencing memorandum, not only has it caused great devastation  
23    to the victim and her family, everything she may have to  
24    endeavor for the rest of her life, he did the same thing to his  
25    own family because of his own behavior. What his -- as I

1       stated, that he was the primary caretaker for his mother, who is  
2       in her 70s, and she's had to do a number of things. She's had  
3       to have difficult conversations with people that's approached  
4       her on the street, and it's affected his family as well. So the  
5       sad part about cases like this is it really devastates everyone,  
6       and it really can't be understated how hurtful and harmful his  
7       behavior is.

8               The uphill task is to ask the Court to also look at other  
9       aspects of him, and that can be difficult in cases like this,  
10      and I believe the Court stated it earlier at the genesis of the  
11      hearing that it took into account the fact that he did not seek  
12      or attempt to circulate any videos and that he did accept  
13      responsibility, and I don't mean just by the plea. I mean, just  
14      as the PSR noted, when he had every incentive to try to deny how  
15      he met her on this site or that he knew her or that he traveled  
16      with her multiple times or even that he eventually became aware  
17      of her age and subsequently still began to engage with her, he  
18      admitted all of that, and I can say in my meager ten years of  
19      practice, that's not a common practice when people are first  
20      approached by law enforcement. And as difficult as it is,  
21      that's also another aspect of his character, that he took  
22      responsibility even when it was disincentivized for him at that  
23      point. And even in the PSR it notes that it was in a jail call  
24      where he told his mother what the issue was and that the victim  
25      was 12 years old and he subsequently engaged in sexual

1 intercourse with her and -- sexually assaulted. I want to state  
2 it candidly because she's a minor.

3 And so I also want that before the Court, that this was not  
4 someone, at least in this particular case, in this particular  
5 instance, that was simply looking for minors. The problem is  
6 that once he knew, he did not stop, and that's what was  
7 egregious. That's what was harmful. And as the Court noted, he  
8 also was not honest about his age. And so what I'm saying,  
9 sentence him specific to his character, the fact that he comes  
10 before the Court with a lack of criminal history, that he did  
11 take responsibility, that he continues to take responsibility,  
12 and that myself and the government have engaged in a number of  
13 conversations, and so it doesn't come lightly that we're making  
14 this recommendation to the Court. We're taking into account the  
15 effect and the fact that if after 20 years he is not able to  
16 conform his conduct to the expectations of the law, he goes back  
17 into incarceration. And as I stated in the sentencing  
18 memorandum, it's no small thing that he will most assuredly --  
19 when he is released, the person who is his biggest supporter and  
20 his biggest champion, his mother, will probably have passed  
21 because she's in her mid-70s. He won't see her again out of  
22 custody. He is now a felon, and he has a long time before him  
23 to be in custody, and so I ask the Court to look at those  
24 factors that are also punishment for him because of what he's  
25 done when it's deciding what his sentence is.

1 But it's for all of those reasons that I believe the  
2 government's sentence and what we're joining in is appropriate  
3 in this particular case. Thank you.

4 THE COURT: Thank you, Mr. Hargrove.

5 Before I hear from the defendant, I'm going to ask Ms.  
6 Altman to unmute and let me know if you were able to get any  
7 more details or context as to those other two cases.

8 MS. ALTMAN: No, Your Honor. What I can tell you is  
9 that Mr. Torres was not about to be deported. He was younger  
10 than this defendant, and so perhaps that was the issue. He was  
11 in his early 20s.

12 But I would like to also clarify one thing --

13 THE COURT: So, in other words, the age differential  
14 wasn't as extreme as it is here. Understood.

15 MS. ALTMAN: The mandatory minimum for this case is 15  
16 years, and in --

17 THE COURT: I apologize.

18 MS. ALTMAN: -- the sentencing memo, Mr. Hargrove  
19 recommends 15 years. We're recommending 20. So I don't think  
20 there is a joint recommendation, and we are not recommending the  
21 mandatory minimum, and I just wanted to make sure --

22 THE COURT: And I apologize for -- and I appreciate it,  
23 and I should have noted --

24 MR. HARGROVE: And that's correct, Your Honor.

25 THE COURT: I should have noted the mandatory minimum

1 at the outset. Thank you for that. Thank you for that  
2 clarification.

3 MS. ALTMAN: Thank you, Your Honor.

4 THE COURT: With that, I would be interested in  
5 anything that you wish to say to the Court, Mr. Gardiner.

6 THE DEFENDANT: I just want to apologize. I just want  
7 to apologize to the family that I affected. I'm totally sorry.  
8 I accept responsibility for what I did. Once I would have known  
9 her age, I should have stopped contact with her, and I take full  
10 responsibility for my actions, and I apologize to everybody  
11 involved.

12 THE COURT: And I hope you understand that under the  
13 Section 3553(a) factors, I do have to consider the harm that you  
14 did to this victim but also your decision to continue even when  
15 you knew the victim's age and even when you knew, and this is  
16 almost as inexplicable as your proceeding when you knew her  
17 actual age and sort of indicative of the fact that you must have  
18 known from the beginning that there was something very wrong  
19 here as a 41-year-old man to be in this kind of relationship at  
20 all, but is the fact that even when you knew you were under  
21 investigation, that the foster parents were trying to prevent  
22 any further engagement, that you continued to cause this child  
23 harm, and that I can't ignore that when thinking about an  
24 appropriate sentence.

25 THE DEFENDANT: I should have -- once I found out that



1 she was under the age of 18, I should have stopped all contact,  
2 and I just apologize for my actions, and it was wrong.

3 THE COURT: Age is one thing, but emotional immaturity  
4 is another, and you victimized this young girl, whatever you  
5 told yourself, and I have to consider that as well in thinking  
6 about not just a sentence but the danger that you continue to  
7 represent to society. I'm hopeful that we'll make more progress  
8 in understanding the motivations here, and I know that the  
9 programming in the federal system has gotten better in that  
10 regard. Given your criminal history, I would think that you'll  
11 probably be placed somewhere with programming for sexual  
12 offenders, and I hope you don't make the mistake of thinking  
13 that, "Well, I'm not like these other people," because you were  
14 pulled into behavior that is just indefensible, and you need to  
15 understand why you did what you did if you ever are going to  
16 have hope of stopping yourself from similar conduct. I hope you  
17 take advantage of whatever therapy is provided.

18 Unless you wish to add anything more, I am prepared to  
19 render sentence.

20 The defendant was raised in Chicago and Kansas City by his  
21 parents. Though he describes his childhood in positive terms  
22 and reported his parents had a good relationship, the  
23 defendant's brother describes their father as abusive and  
24 suffering from addictions to heroin and alcohol. The defendant  
25 also suffered multiple challenging losses throughout his early

1 childhood, which exacerbated his own mental health concerns over  
2 time. Despite reported support of his family, the defendant  
3 reported using alcohol to cope even before his arrest for the  
4 instant offense, and I suspect that there are deep-seated issues  
5 of denial for this defendant as to what he saw and experienced  
6 and how he was raised himself that he will have to get to the  
7 bottom of if he's ever going to dig his way out of this horrific  
8 crime. As for education, the defendant did not graduate high  
9 school but reportedly went on to earn a GED at age 30.  
10 Moreover, information about the defendant's employment history  
11 is conflicting, providing no validated jobs, and his brother  
12 reported long-standing concerns for the defendant, indicating  
13 that he struggled to find stability in life. It was noted that  
14 the defendant seemed to be helping his grandmother, but that too  
15 is hard to quantify.

16 As for the offense of conviction, in the summer of 2019,  
17 the defendant met a 12-year-old female foster child online and  
18 communicated with her through various internet applications for  
19 several months portraying himself to be 18 years old with three  
20 foster siblings. The defendant communicated with the victim  
21 often and would travel to Wisconsin on numerous occasions to  
22 pick her up and transport her to parks and motels for the  
23 purpose of engaging in sexual intercourse. On several occasions  
24 the defendant also provided her with alcohol and refused to  
25 return her home when she requested. On one occasion the

1 defendant even brought three purported foster brothers with him,  
2 and those three also proceeded to have sexual intercourse with  
3 the child, apparently prompting the defendant to abandon her at  
4 the motel. The defendant further filmed his sexual encounters  
5 with the 12-year-old and sent one of the videos to her iPad, the  
6 purposes of which are both devastating and deeply concerning.  
7 Finally, despite learning the child was 12 years old and knowing  
8 law enforcement was aware of his illegal acts, the defendant  
9 persisted in contacting the victim and arranging additional  
10 meetings to have sex with her despite her foster parents' best  
11 efforts to prevent further sexual assaults.

12 Taking into consideration the nature of the offense as well  
13 as the defendant's personal history and characteristics, I am  
14 persuaded that a custodial sentence somewhere between the  
15 20-year sentence recommended by the government and the 30-year  
16 maximum is reasonable and no greater than necessary to hold the  
17 defendant accountable, protect the community, provide the  
18 defendant the opportunity for rehabilitative programs, and  
19 achieve parity with sentences of similarly situated offenders  
20 who engage in sexual relationships with young children, record  
21 those encounters, and then distribute their illicit sexual  
22 encounters, albeit hopefully only to the victim. It is also  
23 intended to underscore that such individuals are dangerous sex  
24 offenders to minors and the need for our society to do better.

25 As to Count 1 of the indictment, it is adjudged that the

1 defendant is committed to the custody of the Bureau of Prisons  
2 for a term of 300 months, in other words, 25 years. During the  
3 period of incarceration, I recommend that the defendant receive  
4 sex offender treatment; substance abuse treatment, including  
5 RDAP; a mental health evaluation and recommended treatment; and  
6 be afforded prerelease placement in a residential re-entry  
7 center with work release privileges.

8 Although the defendant is in primary federal custody, he  
9 has a pending charge in Sauk County, Wisconsin, Circuit Court  
10 Case No. 20-CF-466. Under the Supreme Court's ruling in *Setser*  
11 *v. United States*, I have the discretion to impose a sentence  
12 that will run concurrently with or consecutively to any other  
13 sentence but will stand silent on the pending state case  
14 believing that the state judge is in the best position to decide  
15 if incremental punishment is appropriate in light of the  
16 sentence I imposed today.

17 The defendant's term of imprisonment is to be followed by a  
18 30-year term of supervised release. He will be subject to the  
19 statutory mandatory conditions of supervision. In light of the  
20 nature of the offense and the defendant's personal history, I  
21 adopt Condition Nos. 1 through 25 as proposed and justified in  
22 the presentence report, noting that neither party has raised any  
23 objections to those proposals and that they will fulfill the  
24 goals of the Sentencing Reform Act. Specifically, as already  
25 noted, the defendant's conduct, involving multiple trips from

1 Indiana to Wisconsin during the summer of 2019 to have sexual  
2 intercourse with a 12-year-old female at parks and hotels after  
3 meeting and communicating with her online as well as him  
4 recording some of their sexual encounters and sending it to the  
5 child victim's iPad, demonstrate the substantial need for close  
6 supervision upon his release from custody, especially his  
7 persisting in that conduct even after learning the victim was 12  
8 years of age and law enforcement was involved.

9 Acknowledging that the defendant's criminal history is  
10 limited to the one conviction for illegal transport of a firearm  
11 and one allegation of battery to a prisoner while detained, his  
12 education and employment history could not be verified, and his  
13 history of alcohol use to cope with diagnosed mental health  
14 conditions underscore something that he did not address with  
15 ongoing mental health treatment and never received substance  
16 abuse treatment demonstrate how crucial close supervision and  
17 assistance with education, job placement, alcohol and mental  
18 health treatment, and stable housing will be to his successful  
19 transition to a law-abiding life upon release.

20 In addition, the instant offense, although not drug  
21 related, mandatory drug testing as set forth in Section 3583(d)  
22 of Title 18 for supervision cases is not waived based on his  
23 history of marijuana and hallucinogens use as addressed in  
24 Condition No. 17.

25 As counsel is aware, the Seventh Circuit has continued to

1 leave open the possibility that this court should enter on the  
2 record each of the conditions verbatim and then justify them  
3 individually, and I'm happy to do so, unless the defense wishes  
4 to waive that recitation.

5 And I'm hoping we still have Mr. Hargrove, although I  
6 cannot quite see him on the screen. The question, Mr. Hargrove,  
7 is whether my justifications for the conditions of supervision  
8 are adequate or whether you want me to enter each of the  
9 conditions verbatim on the record and justify them individually,  
10 which I will --

11 MR. HARGROVE: I heard the Court. I believe the  
12 Court's colloquy thus far is adequate. I can answer any  
13 subsequent questions from my client.

14 THE COURT: Well, let me make sure, do you have any  
15 questions about the conditions that were set forth in the  
16 presentence report at this time, Mr. Gardiner?

17 THE DEFENDANT: No, sir. No, Your Honor.

18 THE COURT: All right. I am afraid I am going to ask  
19 that you formally waive my going through each condition and  
20 justifying each of them, although I will incorporate that from  
21 the presentence report into my justifications today. Unless  
22 it's formally waived, I'll have to do that, which I will do.  
23 I'm not opposed to doing it, but it would have to be something  
24 you formally waive. Is that your desire?

25 MR. HARGROVE: Not without having a breakout with Mr.

1 Gardiner if the Court wants a formal waiver.

2 THE COURT: Then I'm afraid that, as I read the Seventh  
3 Circuit case law, that's what we'll need to do. I'm not -- I  
4 want to be clear: I'm not requiring you to waive it, and I have  
5 the conditions in front of me, and I'm happy to walk through  
6 each of them and justify them individually, understanding there  
7 are 25 set forth in the presentence report in some detail and  
8 that I would justify each of them.

9 If you want to break out for that discussion, go ahead.

10 MR. HARGROVE: Yes, very briefly. It will only take a  
11 minute or two. If I can just have a breakout.

12 THE COURT: Sure. We will do that. Very good.

13 And, Mr. Gardiner, you'll be passed into a separate room as  
14 well in a moment. I hope. And why don't we go off the record  
15 at this time.

16 (Discussion held off the record.)

17 THE COURT: With that said, we'll go back on the record  
18 at this time, I believe.

19 THE CLERK: No. I think he just finally went into the  
20 room.

21 THE COURT: Okay.

22 (Pause in proceedings from 2:12 p.m. until 2:14 p.m.)

23 THE COURT: All right. We'll go back on the record. I  
24 think we might have --

25 THE CLERK: We're still waiting for --

1 THE COURT: -- lost defense counsel for a moment, but  
2 we're back on the record. As soon as we have Mr. Hargrove, you  
3 can address the Court. I hope we get him back. There we are.

4 MR. HARGROVE: Yes. I apologize, Your Honor.

5 THE COURT: We're back on the record. Sorry. Go  
6 ahead. We're back on the record.

7 MR. HARGROVE: Forgive me. I didn't mean to cut off  
8 the Court.

9 I did speak with my client, and I believe we are fine  
10 waiving the reading of those conditions in court today.

11 THE COURT: And is that correct, Mr. Gardiner?

12 THE DEFENDANT: (Muted).

13 THE COURT: You have your mute on. I don't know if  
14 that was intentional or not. Hopefully you can -- yes, there  
15 you go.

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Okay. Very good.

18 With that said, I do want to emphasize for Mr. Gardiner,  
19 since this will be a very long time, that you appreciate any  
20 condition I've imposed today may no longer be appropriate when  
21 you're released. If that's the case, you should work with your  
22 probation officer to reach agreement on amendments that will  
23 have to be brought back to the Court, whether it's to me or some  
24 other federal judge who would consider the merits of it. Even  
25 if the probation officer doesn't agree, you can petition the



1 Court for amendments at the time of your release.

2 It is adjudged the defendant is to pay a \$100 criminal  
3 assessment penalty to the Clerk of Court for the Western  
4 District of Wisconsin, which is required by statute and  
5 immediately due following sentencing. I do encourage the  
6 defendant to make that payment if possible. If not, then at  
7 least to do the check off so that he is not precluded from any  
8 programming as a result while confined in the federal prison  
9 system.

10 The victim in this case has not yet made a specific request  
11 for restitution. However, as noted in the plea agreement, the  
12 defendant has agreed to pay restitution, and so by request of  
13 the government's counsel, I have set over for a restitution  
14 hearing on August 20th of this year at 1:00 p.m. consideration  
15 of an appropriate restitution amount in addition to any other  
16 criminal penalties, restitution, or special assessment  
17 authorized by law the Court is directed to assess while not more  
18 than \$17,000 for any person convicted of an offense under  
19 Section 2252(a)(4) of Title 18 or Section 2252A(a)(5) and not  
20 more than \$35,000 for any person convicted of any other offense  
21 for trafficking in child pornography; finally, not more than  
22 \$50,000 for any person convicted of child pornography production  
23 offenses. The Court will consider factors under Section 3553(a)  
24 and Section 3572 both of Title 18 when ordering this assessment,  
25 but I will defer as to the amount consistent with the request of

1 the parties. The defendant is -- well, I'm just going to defer  
2 on that.

3 I do find at this point that the defendant lacks the  
4 economic resources to allow him to make full payment of  
5 restitution in the foreseeable future, so I will set a nominal  
6 payment to begin 30 days from his release from custody at the  
7 appropriate time.

8 The defendant is to notify the United States Attorney  
9 General and this court of any material change in his economic  
10 circumstances that might affect his ability to pay restitution.

11 Finally, in addition to whatever restitution is ordered, I  
12 find that the defendant would lack the means to pay a further  
13 fine under Section 5E1.2(c) without impairing his ability to  
14 support himself upon release from custody.

15 And a final order of forfeiture will be granted for the  
16 property seized from the defendant as reflected in the  
17 forfeiture order in accordance with Section 2253 of Title 18.

18 Based on the offense of conviction, the defendant is  
19 required to pay a \$5,000 assessment under the Justice for  
20 Victims of Trafficking Act of 2015 unless indigent. However, I  
21 again find that he is indigent, and this assessment is waived.

22 The probation office is to notify local law enforcement  
23 agencies and the state attorney general of the defendant's  
24 release back to the community.

25 In the event that the parties do reach agreement on

1       restitution, I will, under Section 3664(f) (3) (B), require the  
2       defendant to at least begin making nominal payments of a minimum  
3       of \$100 each month beginning within 30 days of his release.

4               With that said, I understand that there are additional  
5       counts to be dismissed at this time under the plea agreement?

6               MS. ALTMAN: Yes, Your Honor, and I would so move.

7               THE COURT: Those counts, I believe, 2 through 4, but,  
8       regardless, the remaining counts against this defendant are  
9       dismissed.

10              I will ask, Mr. Hargrove, for you to confirm that I've  
11       sufficiently addressed the defendant's main arguments in  
12       mitigation today.

13              MR. HARGROVE: Yes.

14              THE COURT: Then, finally, I want to emphasize for you,  
15       Mr. Gardiner, you have a right to appeal this court's sentence.  
16       It is -- it has not been arrived at lightly, but in addition to  
17       your plea, you can challenge the sentence by filing a notice of  
18       appeal. You only have 14 days to do that, so you should discuss  
19       it with Mr. Hargrove, who I'm confident would assist you in  
20       filing the notice, although someone else may be appointed to  
21       represent you on appeal.

22              With that, I can only say that I realize this sentence is  
23       not going to be satisfying to the victim or her family nor  
24       obviously to the defendant, but I've tried to weigh the harm  
25       done and the requirements of the statute in sentencing and also

1 hope that the defendant is able to gain insights as to how he  
2 managed to justify in his own mind the conduct for which he has  
3 now been sentenced.

4 With that said, I believe we are in recess, unless there's  
5 something more for the government?

6 MS. ALTMAN: Nothing, Your Honor. Thank you.

7 THE COURT: Or for the defendant.

8 MR. HARGROVE: Just, Your Honor -- I might have missed  
9 it -- do we need to establish credit?

10 THE COURT: Normally that's done by the Bureau of  
11 Prisons itself.

12 MR. HARGROVE: Okay.

13 THE COURT: Assuming he was in custody, which I believe  
14 he was, federal custody while held, all of that would be applied  
15 against his federal sentence. The only portion that would not  
16 be applied would be if he were to have been held at some point  
17 in state custody and an actual sentence is imposed in this case.

18 Officer Stieve, for the benefit of the defendant, do you  
19 know roughly how much credit he'll have against his sentence?

20 OFFICER STIEVE: I don't, Your Honor, only that he's  
21 been in federal custody.

22 THE COURT: All right. Mr. Hargrove, you're welcome to  
23 come back to the Court if there's a problem with the calculation  
24 by the Bureau of Prisons, but typically they're pretty receptive  
25 to an award of full credit. Given that the defendant has 25

1       years ahead of him, there will, sadly, be plenty of time to  
2       address that if not.

3               With that said, I am going to recess, and I do hope, Mr.  
4       Gardiner, you're able to find some semblance of understanding  
5       and grace in your future. We are in recess.

6               MS. ALTMAN: Thank you.

7               THE CLERK: This court stands in recess.

8               (Proceedings concluded at 2:23 p.m.)

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1 I, JENNIFER L. DOBBRATZ, Certified Realtime and Merit  
2 Reporter in and for the State of Wisconsin, certify that the  
3 foregoing is a true and accurate record of the proceedings held  
4 on the 15th day of June, 2021, before the Honorable  
5 William M. Conley, U.S. District Judge for the Western District  
6 of Wisconsin, in my presence and reduced to writing in  
7 accordance with my stenographic notes made at said time and  
8 place.

9 Dated this 28th day of October, 2021.

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15 \_\_\_\_\_/s/ Jennifer L. Dobbratz\_\_\_\_\_

16 Jennifer L. Dobbratz, RMR, CRR, CRC  
17 Federal Court Reporter  
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